Statement By

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Alliance for a Stronger FDA

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INTRODUCTION

Mr. Chairman and members of the Committee, I am William K. Hubbard. Before my retirement after 33 years of Federal service, I served for many years with the U.S. Food and Drug Administration, and for my last 14 years was an FDA Associate Commissioner responsible for, among other things, FDA's regulations and policy development. Although I remain retired since my departure from FDA, I serve as an advisor to The Alliance for a Stronger FDA, a consortium of patient, public interest, and industry organizations whose mission is to urge that FDA's appropriations be increased. The Alliance and its constituent members are greatly concerned that FDA's resource limitations have hampered the agency's ability to ensure the safety of our food and drug supply. Today's hearing is a further exploration of your recent focus on one of those concerns—the massive increase in pharmaceuticals being imported into the United States at a time in which FDA's capacity to oversee those foreign producers is in serious doubt. Accordingly, I wish to thank the Committee for inviting me to testify on that subject today.

BACKGROUND

As you know, Congress created the current regulatory structure for assuring the safety of human drugs in 1938, through its enactment of the Food, Drug and Cosmetic Act. That statute recognized that drugs could be a key component of our health care system, but that drugs were also powerful chemicals with the capability to produce great harm if not carefully regulated. Thus, Congress determined it necessary to create a relatively

pervasive regulatory system, a key part of which is oversight of the production processes by which our drugs are manufactured. In carrying out its Congressional mandate, FDA has promulgated regulations that provide specific requirements for drug manufacturers to meet, known as GMPs (for Good Manufacturing Practices). These include requirements that active ingredients of the drug be of a prescribed purity, strength and quality; that the drug be made in well controlled, sanitary conditions; that its labeling and packaging be equally well controlled; and that laboratory tests of the drug be performed routinely using well established scientific methods and properly calibrated equipment to confirm that the drug is always produced in the form approved by the FDA.

GMPs and Domestic Drug Production - A Successful Safety Record

The result of this regime established by Congress, and implemented by FDA and drug manufacturers, has been a domestic drug supply in which Americans can have great confidence with regard to quality and safety. Combined with the success of the user fee program that this Committee created, we have access to new drugs as fast or faster than anywhere else in the world and we can be assured that our medications produced in the United States conform to equally high production standards. Moreover, countries around the world have been able to look to the FDA as the "gold standard" for determining if a new drug should be approved and for establishing safe manufacturing controls for marketed drugs. But the investigations you have been pursuing in recent months with regard to imported drugs point to a dark side of drug manufacturing that threatens to undercut the hard work of so many and the traditional safety assurances upon which we have long relied.

FOREIGN SOURCING OF THE U.S. DRUG SUPPLY

The reason for this concern, of course, is that 80% of the active ingredients in our drugs are now coming from overseas, and increasingly the so-called "finished pharmaceutical"—the pill we take by mouth or liquid injected into our bodies -- is being produced in other countries as well. Further, the most rapid growth in foreign drug suppliers has occurred in developing nations such as China and India, with the prospect of future suppliers from Vietnam, Thailand, Malaysia and a host of African counties. Unfortunately, we know from experience that drugs produced overseas are not given the same "special" treatment that we have given drugs made here in the United States. In most countries, pharmaceuticals products are subject to normal arbitrage, which means that drugs move about much as do electronics, apparel, auto parts and thousands of other goods. This has meant that drugs are often purchased from suppliers who have little or no oversight by regulatory bodies; that key elements of safe drug production are ignored—such as quality testing, expiration dating, and labeling; and that producers of substandard and counterfeit drugs have a relatively easy access to the marketplace. Finally, in less developed countries, it is abundantly clear that the regulatory bodies, if they exist at all, are weak and ill prepared to assure the safe production, distribution and storage of drugs being exported to the United States.

DRUG COUNTERFEITING

Further complicating and endangering this situation is the prevalence of counterfeiting around the world. We, of course, see counterfeit designer clothing, watches and videos

being sold on street corners across the country. But a fake Gucci bag is likely to pose little threat to your health, while counterfeit drugs are reported to cause deaths in the hundreds of thousand worldwide each year. In some countries, it is estimated that a patient is more likely to get a counterfeit drug than a real one, meaning that more than half of that nation's drug supply is fake. Indeed, drug counterfeiting is considered to be endemic around the world, with the United States until recently a rare exception. But that may be changing rapidly. FDA has seen its counterfeit drug caseload soar in recent years, paralleling the movement of drug production from domestic to foreign sources.

Perhaps this is coincidental, but certainly China has been alleged to be a principle world supplier of counterfeit products. For example, a "sting" operation by the The Sunday Times of London last year set up a phony drug wholesaler, who was able to buy large quantities of counterfeit drugs from a Chinese manufacturer, who was reported to make pharmaceutical ingredients for legal sale by day and fake drugs for illicit sale by night. The Times reported that counterfeiters are increasingly turning from fake handbags and currency to drugs, because the drugs are so easy to make and sell on world markets.

And the New York Times described recently how counterfeit glycerin, which has been linked to hundreds of deaths in children when used in cough syrups and analgesics, was traced through a pipeline "from the Panamanian port of Colon, back through trading companies in Barcelona, Spain, and Beijing, to its beginning near the Yangtze Delta in a place local people call 'chemical country'."

FDA AND IMPORTED DRUGS

As this is occurring, what has been the reaction by our regulatory structure – the FDA? I recognize that you and others in Congress have been highly critical of FDA's oversight of drug imports in a number of areas – poor identification of foreign drug sourcing, little examination or testing of drugs when they arrive at U.S. ports, and virtually no routine surveillance of foreign drug manufacturers for adherence to GMPs. But, as you know, I have often defended the agency as a cadre of highly capable, dedicated public servants who are struggling to keep up with the challenges of a rapidly changing pharmaceutical supply chain. I contend that we as a nation have failed to give FDA the tools it needs to carry out the mission we have assigned to them, such as:

- Staff to conduct regular inspections in foreign facilities as are now done for domestic manufacturing plants;
- Modern IT systems that would allow FDA to effectively track and monitor the production and movement of imports. The import data system is so old and communicates so poorly with other FDA information systems that it is difficult for FDA officials to use risk as a predominant driver of their compliance;
- Registration procedures for foreign drug manufacturing that would allow us to know who is making drugs for our market, where they are located, and what they are manufacturing; and
- Port inspectors to examine the almost 20 million annual shipments of foods, drugs, and other products that FDA is expected to regulation. For over 400

ports of entry, FDA has only 450 inspectors, meaning that most ports aren't staffed at all and many can be staffed only part time.

Irrespective of particular needs, however, we must also face up to the fact that FDA is asked to regulate these products with a law whose 70th anniversary is this year – a time in which there were few drugs being made anywhere in the world, and none being imported into the United States. To use a transportation analogy, drug manufacturing has moved in the ensuing years from automobiles to airplanes to spacecraft, and FDA is still driving a Ford Model T, at least with respect to imported drugs. Current law and resource allocations for the FDA place most of the responsibility for assuring the safety of imported drugs on the agency. So, while domestic drug manufacturers are held to a high standard of drug safety, with regular GMP inspections, foreign producers often need worry only about the remote possibility that an FDA inspector at a border crossing will find a problem and stop the drug's entry.

WHERE DO WE GO FROM HERE?

I recognize that members of Congress on both sides of Capitol Hill are considering a number of legislative improvements to address import safety. Making major changes in the regulatory structure will likely be akin to turning a giant oil tanker – you can start the turn now, but it will take considerable time to fully change direction. But I believe there are some key principles that could be adopted right away, which have been suggested by the GAO and by FDA's Science Board:

1) **We need to initiate GMP inspections of foreign drug manufacturing facilities immediately, with a special focus on drugs made in countries without a safe drug production and internal regulation.** Without such inspections, we essentially have no oversight of those manufacturers. A GMP inspection is far more than just a snapshot of that facility the day the inspector arrives. It is a detailed survey of how that plant has been operating for months, which allows a realistic conclusion about whether that facility can and does follow accepted drug production procedures. Relying on testing by the FDA or the U.S. drug company that receives the foreign ingredients is not a substitute for examining the source of production. The GAO notes that FDA today can allocate only about $11 million for its entire foreign drug inspection program. That is far too little an effort for such an important part of our national safety net, but, unfortunately, says a great deal about our current commitment to assuring the safety of those drugs. I urge you to support a level of appropriated funds that will permit FDA to assure that foreign facilities are complying with our standards.

2) **Upgrading FDA's IT systems should be among our highest priorities**. If we don't even have a system for capturing who's making these products, where they are, what's coming into our country, and related critical information needs, we can't hope to begin the process of improving our coverage of imports. The IT systems should be configured in a way that allows the agency to use a myriad of risk factors, including potential impact on the public health, to direct its inspectional and import efforts. The Science Board recommends increased appropriations of $800 million for FDA's overall IT needs, so there is a long way to go if FDA is to have state-of-the-art information systems, but we could at least start with funding an effective import information system.

3) **Institute a vigorous mechanism for testing drugs for ingredients or contaminants that are not approved for that compound**. History has shown that processors, especially in less developed countries, can be adept at adding substances to increase the value of the product or decrease costs of production. But the danger of doing so, whether it be the industrial plastic melamine in pet food, the polysaccharide inulin in apple juice, or the dietary supplement chondroitin in heparin, is well established, and poses an enormous hole in the safety net we are trying to maintain. Recent events have shown that U.S. processors and the public can be victimized alike by these nefarious activities, and we must find a way to end them.

In conclusion, I believe that the scientists within the Food and Drug Administration have shown that they can effectively assure the safety of drug production when given the tools with which to do so. And U.S. drug manufacturers accept the need for high standards in drug manufacturing and generally adopt those standards faithfully, and many go to great lengths to secure their chain of supply of drug ingredients. Drugs made in the United States under FDA's rigorous quality control standards have an extraordinarily good safety record, as measured by the paucity of manufacturing defects and deaths and illnesses related to manufacturing deficiencies. But it is obvious that foreign sources do not share in that record of success. It does no good to have rules if they are not obeyed, no good to set high standards if they are not used, and no good to develop advanced scientific skills if they are not employed. That countries such as China have a record of serious problems in drug manufacturing is indisputable. And the disparity in drug inspections – in which FDA inspects U.S. facilities regularly and those in China and India

almost never -- is indefensible. I urge you to make changing that paradigm one of your highest priorities for this year.

Thank you again for inviting me to give my views on this subject.